

12.412 DOMESTIC VIOLENCE

References:

- Procedure 12.400 - Offense Reporting, Miscellaneous Reporting
- Procedure 12.403 - Victim of Crime Notification
- Procedure 12.410 – Criminal Warrants/Referrals and Private Complaint Program
Case Referrals/Dispositions
- Procedure 12.413 - Enforcement of Court Orders
- Procedure 12.555 - Arrest/Citation: Processing of Adult Misdemeanor and Felony
Offenders
- Procedure 12.705 - Property Confiscation
- Procedure 12.900 - Processing Juvenile Offenders
- ORC 2903.11 - Felonious Assault
- ORC 2903.12 - Aggravated Assault
- ORC 2919.25 - Domestic Violence
- ORC 2919.26 - Motion for Temporary Protection Order; Form
- ORC 2919.27 - Violating Protection Order or Consent Agreement
- ORC 2935.03 - Officer's Authority to arrest without warrant; pursuit outside
jurisdiction
- ORC 2935.032 - Policies and procedures for responding to alleged Domestic
Violence offense or violation of protection order
- ORC 3113.31 - Definitions; jurisdiction; petition; hearing; protection orders;
consent agreements
- USC Title XVIII, Part 1, Chapter 110A, Section 2261 - Interstate Domestic
Violence
- USC Title XVIII, Part 1, Chapter 110A, Section 2262 - Interstate Violation of
Protection Order
- USC Title XVIII, Section 922 - Prohibition Against Disposal of Firearms to, or
Receipt of Firearms by, Persons Who Have
Committed Domestic Abuse

Definitions:

Mandatory Arrest: Mandatory arrest is an immediate arrest based on probable cause that the offense of domestic violence has occurred and is supported by some evidence indicating the suspect committed the offense.

Probable Cause: Probable cause exists when facts and circumstances within the officer's knowledge, and of which he has reasonably trustworthy information, are sufficient to warrant a person of reasonable caution to believe the offense has been or is being committed, and the accused is or has committed the offense. Completion of the Victim's Statement section of the Form 655R, Victim Assistance/Citizen Referral, by the victim is probable cause pursuant to Ohio Revised Code (ORC) 2935.03(B).

Purpose:

Provide officers with the knowledge to effectively respond to and investigate incidents of domestic violence.

Policy:

Officers will respond to the scene of reported incidents of domestic violence without delay.

Exercise extreme caution in disregarding backup officers, even if the offender is no longer present, in the interest of officer and victim safety. Give consideration to the potential of the offender returning to the scene while the officer is present or immediately thereafter.

Domestic violence is a violent crime. The involvement of family members does not lessen the use of arrest and prosecution as an effective deterrent.

Department policy regarding domestic violence is immediate arrest of the offender when probable cause exists. The formal arrest/court process is the most appropriate method of resolution.

Charge all appropriate cases with domestic violence, felonious assault, or aggravated assault in incidents arising out of a domestic violence offense, and make a mandatory arrest. If a felonious assault or aggravated assault is committed in a domestic violence offense, charge the suspect with the appropriate felony charge. Do not, in addition, charge the suspect with a misdemeanor domestic violence.

Officers will complete the Protection Order Supplemental Form for any of the following offenses in which the victim and suspect are family or household members:

2903.01 Aggravated Murder	2903.02 Murder
2903.03 Voluntary Manslaughter	2903.04 Involuntary Manslaughter
2903.11 Felonious Assault	2903.12 Aggravated Assault
2903.13 Assault	2903.15 Permitting Child Abuse
2903.21 Aggravated Menacing	2903.211 Menacing by Stalking
2903.22 Menacing	2905.01 Kidnapping
2905.02 Abduction	2905.11 Extortion
2907.02 Rape	2907.03 Sexual Battery
2907.05 Gross Sexual Imposition	2909.02 Aggravated Arson
2909.03 Arson	2909.04 Disrupting Public Services
2911.01 Aggravated Robbery	2911.02 Robbery
2911.11 Aggravated Burglary	2911.12 Burglary
2917.01 Inciting to Violence	2917.02 Aggravated Riot
2919.22 Child Endangering	2919.25 Domestic Violence
2921.03 Intimidation	2921.04 Intimidation of Attorney, Victim
2921.34 Escape	2923.161 Improperly Discharging Firearm Into a Habitation/School Zone

The Protection Order Supplemental Form must accompany the Form 527, Arrest and Investigation Report, at the time an arrested individual is admitted into the Hamilton County Justice Center. This requirement applies to the arrest of adult suspects only; juvenile suspects are exempt from this requirement.

Information:

Under the domestic violence law a fetus is **not** considered a child. If, while investigating a domestic violence incident, the victim advises she is pregnant and the offender is the father of her unborn child, and no other facts constitute domestic violence, charge with the appropriate assault charge.

If, while investigating a domestic violence incident, the victim has an infant and advises the offender is the father of the baby and they do not or have not resided together, charge with assault and domestic violence. The domestic violence is a valid charge under the Putative (supposed) Rule. The assault charge is filed in the event that test results indicate the putative father is not the biological father. If blood test results indicate the offender is not the father of the child, the domestic violence charge will be dropped because the blood test eliminates the relationship.

The mother of a child has **sole custody** if:

1. The couple is not married;
2. There is not a court order to the contrary; and
3. The child was born on or after 1/1/98.

If the child was born before 1/1/98 both parents are deemed to have equal rights to the child. Officers shall use discretion and good faith when considering the best interest of the child when confronted with this situation.

Procedure:**A. Initial Response**

1. When Police Communications Section (PCS) receives a report of a domestic violence situation they will dispatch one two-person unit or two single person units and necessary emergency medical aid.

B. On Scene Investigation

1. Upon arrival, responding officers will separate the involved parties. Separation is the most efficient method of gathering the necessary details of the incident as well as protecting all parties from injury when the offender(s) and victim(s) are identified.
 - a. Determine the nature of injuries to any parties, and request the assistance of emergency medical services, if necessary.
 - b. Give primary consideration to the safety of all parties involved and the immediate cessation of any further violence.
2. Make every attempt to obtain positive identification, a description, destination, and means and direction of travel if the offender is not present upon arrival.
 - a. In an attempt to apprehend the offender, this information must be relayed to officers in the area as soon as possible.

3. If probable cause exists and an arrest cannot be made because of the offender's absence, the officers will promptly seek a warrant for the arrest of the person.
 - a. A Form 655R, Victim Assistance/Citizen Referral, will be issued to the complainant for the immediate filing of an affidavit and warrant against the offender.
 - 1) The officer will ensure the complainant completes the Domestic Violence Victim's Statement on the Form 655R and will attach it to the Form 301, Cincinnati Police Department Incident Report.
 - a) Document on the Form 301 if the complainant refuses to complete the Form 655R.
 - b) Transport complainant to sign charges.
 - c) Recommend the victim sign a Temporary Protection Order (TPO) when signing the domestic violence charge.
 - b. If the complainant is physically unable or is unwilling to file charges, the officer will sign an affidavit and warrant for the arrest of the offender.
 - c. Have the complainant fill out the top two sections of the Protection Order Supplemental Form. If the complainant is unable or unwilling to fill out the form, the officer will assist in completing the form with the information available.
 - 1) The officer will complete the "Law Enforcement Response Section" on the bottom of the page.
 - 2) The completed Protection Order Supplement must accompany the Form 527 when submitted during the intake procedure.
 - 3) If there is not an immediate arrest, fill out the Protection Order Supplemental Form when signing any applicable warrants(s) and leave the form with the Hamilton County Clerk's Office.
4. Make every attempt to identify the primary physical aggressor in the incident. Consider the following elements in this identification:
 - a. The history of domestic violence or any other violent acts committed by all parties in the incident.
 - b. Whether the violence was committed in the act of self-defense.
 - c. Each participant's reasonable fear of the other person based on the person's history of any threatened or committed acts of violence.

- d. The comparative severity of any injuries sustained by the individuals involved in the incident.
- 5. Base probable cause for arrest of the primary physical aggressor on the following elements:
 - a. The victim, or the parent of a child victim, completes a written allegation against the offender.
 - b. In the absence of a written statement, any personal knowledge and observation of the incident by the officer.
 - c. Any other information, including but not limited to, reasonable trustworthy information given by the alleged victim or any witness to the incident.
- 6. Make a mandatory arrest if the offender is identified, present, or immediately available for arrest.
- 7. The preferred course of action is to arrest and detain the primary physical aggressor until a warrant can be obtained once probable cause has been established.
 - a. The preferred course of action (arrest) does not apply to incidents in which the primary physical aggressor cannot be identified.
 - 1) Possible course of action would be to arrest both parties for domestic violence if the investigation warrants dual arrest.
- 8. Conduct the investigation and arrest the accused for the offense of felonious assault if the investigation determines serious physical harm has occurred to a victim, or physical harm has been attempted (or caused) by means of a deadly weapon or dangerous ordinance in a domestic violence offense.
 - a. When the individual committing the felonious assault is not the primary physical aggressor, arrest and charge with the appropriate state section.
 - 1) Arrest and charge the primary physical aggressor with Domestic Violence - ORC Section 2919.25.
- 9. Conduct the investigation and arrest the accused for the offense of aggravated assault if the investigation determines that a felonious assault was committed by the offender during a "fit of passion or rage brought about by serious provocation of the victim".
 - a. When the individual committing the aggravated assault is not the primary physical aggressor, arrest and charge with the appropriate state section.

- 1) Arrest and charge the individual in the domestic violence offense who is the primary physical aggressor with ORC Section 2919.25 - Domestic Violence.
10. If investigation determines both parties committed either aggravated assault or felonious assault, the primary physical aggressor, if identified, is subject to the "preferred course of action" provision and will be physically arrested until a warrant can be obtained. The other party will also be arrested and charged with the appropriate violation.
 - a. Arrest both individuals when both individuals committed either aggravated assault or felonious assault and the primary physical aggressor cannot be identified.
 11. Notify the Criminal Investigation Section (CIS) if death appears imminent to the victim of a domestic violence offense.
 12. Seize any deadly weapons materially involved by threat, display, use, or attempted usage in domestic violence violations as contraband and/or evidence.
 13. Do not demand or otherwise require the victim's specific consent or a signed allegation (written statement) as a prerequisite to arresting and/or charging an alleged offender with the offense of domestic violence when probable cause exists.
 14. The arresting officer will sign the appropriate affidavits and complaints for all charges when the complainant is medically unable or refuses to cooperate with the investigation and there is probable cause a domestic violence offense occurred. The arresting officer will sign all felony charges arising from a domestic violence offense.
 - a. Charge as a felony if there is a prior conviction for domestic violence and the current offense does not constitute a threat.
 - 1) Confirm the conviction with the Clerk's Office before signing the felony charge.
 - b. Charge as a misdemeanor if a prior domestic violence conviction exists and the current domestic violence offense is a threat against the victim.
 - c. The arresting officer will sign a TPO request when filing domestic violence, felonious assault, or aggravated assault charges.
 - 1) Officers signing a TPO request will not appear at arraignment.
 - d. Complete a detailed Form 527A, Case and Bond Information Sheet, to assist the judge in setting bond and TPO terms.
 15. Report on a Form 301 every incident of Domestic Violence - ORC Section 2919.25.

- a. List the offense and section number followed by (F) for felony or (M) for misdemeanor based on what degree of offense the suspect is charged with.

Example: Domestic Violence 2919.25 (F) when offense constitutes a felony as a result of prior convictions for DV or other applicable ORC violations, or Domestic Violence 2919.25 (M) when offense constitutes a misdemeanor for this violation.

- b. Make one Form 301 for domestic violence if an offender commits an offense of DV and a TPO/Civil Protection Order (CPO) violation offense at the same time.

- 1) List the facts of the TPO/CPO violation in the "Narrative" section of the Form 301.

- c. Report incidents of felonious assault and aggravated assault that occur during a domestic violence offense on a Form 301. Do not make an additional Form 301 for domestic violence.

- 1) List the offense section number followed by (DV) for domestic violence in the "Offense" section of the Form 301.

EXAMPLE: Felonious Assault 2903.11 (DV) or Aggravated Assault 2903.12 (DV)

- d. Check "Yes" in the "Hate/Bias" block, and write "88" in the "Explain: Anti:" block on the Form 301.

- 16. Complete a Form 311DV, Cincinnati Police Department Confidential Investigative Notes - Domestic Violence, for all DV offenses, violations of TPO/CPO, and felonious assault or aggravated assault offenses arising from domestic violence, in addition to the required portions of the Form 301. Obtain the following information from the separated parties involved and available witnesses:

- a. Detailed statement of the reporting officer's observation of the victim, offender, and the scene.
- b. Listing of visible injuries to the victim and offender.
- c. Identification of any weapons found at the scene.
 - 1) Detailed description of any deadly weapons seized or materially involved in the reported incident.
- d. Actions of the victim and offender in the officer's presence.
- e. Verbal and/or written statements of the victim/complainant.
- f. Verbal and/or written statements of the offender.
- g. Explanation why no arrest was affected.

- 1) This explanation may not refer to the availability of cell space at the Hamilton County Justice Center or Hamilton County Juvenile Court Youth Center. Such availability is not to be considered in determining the arrest of the alleged offender and is prohibited pursuant to ORC Section 2935.03 (3) (f).
- h. Detailed listing of similar prior incidents, calls for assistance, and respective dispositions.
- i. Final disposition of warrant filing, i.e., either "referral issued to complainant" or "complaint/warrant filed by reporting officer".
17. Use a Polaroid camera to photograph visible injuries as soon as possible for inclusion with the Form 311DV and submit as evidence.
18. Provide the victim the following information:
 - a. Ohio Attorney General's "Your Rights and Responsibilities as a Crime Victim" booklet.
 - b. Crisis Service Agency phone numbers.
 - c. Telephone numbers of the Prosecutors' Offices and Police Department.
 - d. Information regarding the availability of a TPO or CPO.
 - e. Reporting officer's name, badge number, and phone number.

NOTE: Items b., c., and d. listed above are placed on the inside cover page of the Ohio Attorney General's booklet.
19. Advise victims they must appear at the criminal arraignment on the next court day regardless of who requested the TPO.
 - a. Felony charges are arraigned at 0900 hours in Room A of the Hamilton County Justice Center (HCJC).
 - b. Misdemeanor domestic violence charges are arraigned at 0900 hours in Room B of the HCJC.
 - c. Advise the complainant to check with the Clerk of Courts Office, Room 113, HCJC, if there is doubt about the location of the arraignment.
20. Provide assistance to the victim and/or children in obtaining transportation to a safe location when necessary.
 - a. Use private or public transportation if possible.
 - b. Officers may provide transportation if other means are not available to the victim.

- c. Obtain Fire Department transportation to the hospital for injuries.
 - d. Call the Alice Paul Shelter before transporting to their location.
21. If the elements of domestic violence are not present, refer the complainant to:
- a. Hamilton County Domestic Relations Court, Room 329, Hamilton County Courthouse.
 - b. Rape Crisis and Abuse Center of Hamilton County.
 - c. Talbert House Victim Service Center.
 - d. Alice Paul House.
 - e. Police Clergy Team (available through Hamilton County Communications).

C. Case Preparation

1. Complete a Domestic Violence Jacket for each domestic violence incident. This jacket will include:
 - a. A copy of the Form 301 and all applicable supplements.
 - b. A copy of the Form 311DV.
 - c. A copy of the Form 527, if applicable.
 - d. A copy of the TPO/CPO, if applicable.
 - e. A copy of the Protection Order Supplemental Form.
 - f. Photographs related to the incident.
 - 1) Take a minimum of one full frontal photograph of the victim and one of each reported injury and/or area affected.
 - g. Audio tape copies of any 911 calls to PCS, if applicable.
 - h. The original Form 527B for felony offenses.
 - 1) Immediately fax the Form 527B to the Hamilton County Grand Jury. Include the fax transmittal report in the Domestic Violence Jacket.
 - i. Copies of any related reports.
2. A supervisor will review each Domestic Violence Jacket for completeness and accuracy.

D. Follow-Up Investigation

1. Assign all reported cases of domestic violence, felonious assault and aggravated assault arising from a domestic violence offense, and violation of protection order or consent agreement for follow-up investigation.
 - a. Assign these offenses for a follow-up investigation even when an arrest is made at the scene by the reporting officer.
 - b. District commanders will determine the assignment of reported misdemeanor and felony domestic violence and TPO/CPO offenses.
 - c. Assign reported cases of felonious assault, aggravated assault, and abduction arising from a domestic violence offense per Procedure 12.400, Offense Reporting, Miscellaneous Reporting, for follow-up investigation by a district investigator.
 - 1) Felonious assault and aggravated assault cases arising from a domestic violence offense in which the victim is hospitalized and death appears imminent will be investigated by CIS, per Procedure 12.400.
2. The follow-up investigator will ensure the following tasks are accomplished:
 - a. Recontact the victim within 48 to 72 hours to obtain the following information:
 - 1) Any information the victim might be able to add.
 - 2) Additional photographs of injuries sustained in the incident, when applicable.
 - b. Provide the victim with the investigator's name, badge number, and business phone number.
 - c. Obtain audio tape copies of 911 calls from PCS, if applicable.
 - d. Obtain medical records of suspect, if applicable.

E. Providing Information of Reported Domestic Violence Offenses

1. Each day, district collators will forward the following information on reported domestic violence and violation of protection order offenses:
 - a. To the City Prosecutor's Office, hand carry a copy of all Forms 301 and 311DV reported misdemeanor domestic violence and misdemeanor violation of protection order offenses made with an adult suspect even if no arrest was made at time of report. All reports must be delivered before 0800 hours each court day.

- b. Fax to the Hamilton County Prosecutor's Office, Juvenile Division, a copy of all Forms 301 and 311DV reported misdemeanor domestic violence and misdemeanor violation of protection order offenses made with a juvenile suspect even if no arrest was made at time of report.
 - c. Fax to the Rape Crisis and Abuse Center of Hamilton County, a copy of all domestic violence Forms 301.
- 2. Each day, district collators will forward the following information on reported aggravated assault, felonious assault, felony domestic violence, and felony TPO/CPO violation offenses resulting from a domestic violence offense:
 - a. To the Hamilton County Prosecutor's Office, Municipal Division, hand carry a copy of all Forms 301 and 311DV reported offenses with an adult suspect even if no arrest was made at time of report. All reports must be delivered before 0800 hours each court day.
 - b. Fax to the Hamilton County Prosecutor's Office, Juvenile Division, a copy of all Forms 301 and 311DV reported offenses with a juvenile suspect even if no arrest was made at time of report.
 - c. Fax to the Rape Crisis and Abuse Center of Hamilton County, a copy of all Forms 301 listed above.

F. Temporary/Civil Protection Orders

- 1. Reference Procedure 12.413, Enforcement of Court Orders, for information regarding investigations of violations of a Temporary/Civil Protection Order, ORC 2919.27. **Out-of-state TPO and CPO court orders are enforceable.** Follow Procedure 12.413, Section A.
- 2. TPOs may be issued in addition to any charges filed alleging domestic violence, felonious, aggravated or simple assault, menacing by stalking, or trespassing which involves a family or household member as defined in the ORC.
 - a. TPOs are only in effect until the disposition of the criminal charge, the issuance of a CPO based on the same activities, or otherwise revoked by the issuing court.
 - b. Any TPO or CPO issued by a court of record of the State of Ohio is subject to enforcement in any political jurisdiction within the State of Ohio.
 - 1) TPOs and CPOs issued by a court of record within the State of Ohio, other than Hamilton County, may be officially registered by the complainant in Hamilton County in accordance with ORC Section 3113.31.

- a) TPOs and CPOs issued by a court of record within the State of Ohio will be enforced regardless of whether or not the order was registered by the complainant in Hamilton County.
- G. Release of Medical Records of Suspect(s) Involving an Official Criminal Investigation, Criminal Action, or Proceeding
 - 1. A police officer can submit a written statement to a health care provider that states an official criminal investigation, criminal action, or proceeding has begun regarding a specified person to obtain information regarding the presence of alcohol, drug of abuse, or both in the person's blood, breath, or urine. This requires the provider to supply to the officer copies of any records the provider possesses that pertain to any test or the results of any test administered to the specified person to determine the presence or concentration of alcohol, a drug of abuse, or both in the person's blood, breath, or urine at any time relevant to the criminal offense in question.
 - a. A Form 604, Cincinnati Police Department Request for Release of Records, will be filled out by the officer and presented to the health care provider to obtain this type of records.
 - 1) The officer will keep the white copy for court.
 - 2) Give the canary copy to the health care provider.
 - 3) Turn the pink and gold copy into the collator to be filed.
 - 2. Contact the City Prosecutor when a medical provider refuses to comply with this request.